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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CITY OF AGOURA HILLS,

Plaintiff and Appellant,

v.

TROT, CANTER & GALLOP, LLC,

Defendants and Respondent.

B231811

(Los Angeles County
Super. Ct. No. BC436864)

APPEAL from a judgment of the Superior Court of Los Angeles County, John A., Torribio, Judge. Reversed.

Craig A. Steele, City Attorney; Richards, Watson, & Gershon, Ginetta L. Giovinco for Plaintiff and Appellant.

Garrett & Tully, Ryan C. Squire, Jennifer R. Slater for Defendant and Respondent.

INTRODUCTION

In a first amended complaint, plaintiff and appellant City of Agoura Hills (City) brought an action against defendant and respondent U.S. Bank for quiet title, slander of title, and declaratory relief with respect to certain real property.¹ The trial court sustained U.S. Bank's demurrer to the first amended complaint without leave to amend, and the City appeals.

BACKGROUND

The operative complaint by the City seeks to establish its title to the property. Because a demurrer tests the legal sufficiency of the factual allegations in a complaint, we set forth the factual allegations contained in the first amended complaint, including the facts contained in the exhibits attached thereto:

The real property that is the subject of this action consists of two parcels of land located on Chesebro Road in an unincorporated portion of Los Angeles County (Los Angeles County Tax Assessor's Identification Nos. 2052-009-012 and 2055-010-025) (Property). The Property was owned by the Abraham Joshua Heschel Day School—West (Heschel Day School), a California nonprofit public benefit corporation. The Heschel Day School intended to develop the Property into a private school for up to 800 students. It obtained financing for its project in the form of two loans from Mellon 1st Business Bank (Mellon Bank) secured by two deeds of trust against the Property.

The two Mellon Bank deeds of trust were recorded at 8:00 a.m. on July 5, 2005, as consecutive Instrument Nos. 05 1571227 and 05 1571228. A deed of trust in the amount of \$550,000 (\$550,000 DOT) received the lower recording number of 05 1571227, while a deed of trust in the amount of \$1,625,000 (\$1,625,000 DOT) received the higher recording number of 05 1571228. Thereafter, the deeds of trust were modified by or on behalf of Mellon Bank without altering their order of priority—i.e., the senior priority of

¹ During the pendency of this appeal, Trop, Cantor & Gallop, LLC (Trop) acquired U.S. Bank's interest in the real property at issue. We granted Trop's request to be substituted in U.S. Bank's place as respondent in this appeal.

the \$550,000 DOT, and the junior priority of the \$1,625,000 DOT—or revealing any intent of Mellon Bank to do so. U.S. Bank was the successor-in-interest to Mellon Bank and to Mellon Bank’s interest in the two deeds of trust against the Property.

The Heschel Day School project was opposed by Save Open Space Santa Monica Mountains and the Old Agoura Homeowners Association. Those entities brought a mandate action in Los Angeles County Superior Court that sought to invalidate the school’s land use approvals (mandate action). The Heschel Day School became delinquent in its obligations to Mellon Bank or its successor-in-interest U.S. Bank. On October 5, 2009, a Notice of Default and Election to Sell Under Deed of Trust concerning the \$550,000 and \$1,625,000 DOT’s was recorded by or on behalf of U.S. Bank. On February 19, 2010, a Notice of Trustee’s Sale concerning the \$550,000 DOT was recorded by or on behalf of U.S. Bank.

On March 18, 2010, a trustee’s sale was conducted pursuant to the \$550,000 DOT. The City purchased the trustee’s deed for \$630,000. The following day, U.S. Bank represented to the City that the \$1,625,000 DOT was senior in priority to the \$550,000 DOT. The City requested that U.S. Bank provide support for that representation.

On April 1, 2010, U.S. Bank filed an ex parte application for leave to intervene in the mandate action. In its application, the bank set forth its position that the \$1,625,000 DOT was senior in priority to the \$550,000 DOT, that the \$1,625,000 DOT survived the trustee sale, and that it continued to hold an interest in title to the Property.

On April 15, 2010, U.S. Bank sent the City a letter explaining its position that the \$1,625,000 DOT was the first deed of trust on the Property. The bank stated that the “intent of the parties” to the Heschel Day School loans that the \$1,625,000 DOT was to be the first deed of trust on the Property was “reflected in the instructions to the title company dated July 1, 2005.” The letter enclosed a copy of Mellon Bank’s instructions to the title company which identified the \$1,625,000 DOT as the “first deed of trust” and the \$550,000 DOT as the “second deed of trust.” The instructions were not in the public record or made known to the City prior to the trustee’s sale. Following the trustee’s sale, the City recorded the trustee’s deed on April 20, 2010.

When the City bid at the trustee's sale, it had a good faith belief that the \$550,000 DOT was senior in priority to the \$1,625,000 DOT and that the sale extinguished the \$1,625,000 DOT. At the time of the sale, the City did not have actual or constructive notice of any arrangement or intent to make the \$1,625,000 DOT senior in priority to the \$550,000 DOT, or knowledge of facts or circumstances that would have prompted a reasonable person to question whether there was such an arrangement or intent to make such an arrangement. The City's investigation prior to the trustee's sale did not reveal an arrangement or intention to make an arrangement to subordinate the \$550,000 DOT to the \$1,625,000 DOT. U.S. Bank's public representation that it owned an interest in title to the Property severely impaired the use and vendibility of the Property. The City seeks to quiet title and a declaration that U.S. Bank's lien is not senior to the rights or title held by the City (or its successor-in-interest).

PROCEDURE

U.S. Bank filed a demurrer to the first amended complaint. It argued that the City's quiet title action failed because the \$1,625,000 DOT was senior to the \$550,000 DOT as a matter of law, the City was not a bona fide purchaser because it acquired title to the Property with notice of the senior position of the \$1,625,000 DOT, and the City's declaratory relief cause of action was duplicative of its quiet title cause of action and therefore unnecessary. In its opposition, the City withdrew its cause of action for slander of title.

The trial court sustained U.S. Bank's demurrer. It ruled that the deeds of trust established that the City had notice that the \$1,625,000 DOT was senior to the \$550,000 DOT when the City acquired its interest in the Property and, accordingly, the City acquired title to the Property subject to the \$1,625,000 DOT. The trial court ruled that in determining priority between deeds that were created simultaneously and known to both parties to the deeds, the "first in right" rule does not apply and priority is determined so as to carry out the parties' intent. The trial court observed that even though the \$550,000 DOT had the lower document number, it contained language that it might be a secondary

lien on the property; the \$1,625,000 DOT contained no such language. The \$550,000 DOT was one-third the amount of the \$1,625,000 DOT. The \$550,000 DOT indicated that it was a revolving line of credit; the \$1,625,000 DOT did not. The deeds of trust were created and notarized on the same date and recorded sequentially. A reasonable purchaser, the trial court ruled, would have been put on inquiry notice that the Property might have been subject to a lien that was senior to the \$550,000 DOT. Accordingly, the trial court ruled, the City did not and could not qualify as a bona fide purchaser. The trial court denied the City leave to amend because it was not “probable from the nature of the complaint and the previous unsuccessful attempt to plead” that it could state a cause of action.

DISCUSSION

The City contends that the trial court erred in sustaining U.S. Bank’s demurrer to the first amended complaint because the issue of whether it was a bona fide purchaser is a question of fact that could not be resolved as a matter of law based on the allegations in the complaint and the attached exhibits. The City further contends that it properly stated a separate cause of action for declaratory relief.

A. Standard of Review

“On appeal from a judgment dismissing an action after sustaining a demurrer without leave to amend, the standard of review is well settled. The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] The court does not, however, assume the truth of contentions, deductions or conclusions of law. [Citation.] The judgment must be affirmed ‘if any one of the several grounds of demurrer is well taken. [Citations.]’ [Citation.] However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by

amendment. [Citation.]” (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.) The plaintiff bears the burden of establishing that the complaint could have been amended to cure the defect. (*Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 320.) The legal sufficiency of the complaint is reviewed de novo. (*Montclair Parkowners Assn. v. City of Montclair* (1999) 76 Cal.App.4th 784, 790.)

B. Application of Relevant Principles

1. Quiet Title

“In an ordinary action to quiet title it is sufficient to allege in simple language that the plaintiff is the owner and in possession of the land and that the defendant claims an interest therein adverse to him.” (*South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 740–741.) In its first amended complaint, the City alleged that lien priority is determined by the order in which liens are recorded, the \$550,000 DOT was recorded before the \$1,625,000 DOT, the City purchased the Property free and clear² of the \$1,625,000 DOT, and U.S. Bank claimed that the Property was still subject to the \$1,625,000 DOT. These allegations sufficiently alleged the elements of a quiet title action. (*Ibid.*)

In its demurrer to the City’s quiet title cause of action, U.S. Bank contended that the City was not a bona fide purchaser because it had actual and constructive notice that the \$1,625,000 DOT had senior priority to the \$550,000 DOT and, accordingly, the City acquired title to the Property subject to the \$1,625,000 DOT. “It is well established that a bona fide purchaser for value who acquires his interest in real property without notice of another’s asserted rights in the property takes the property free of such unknown rights.” (*Hochstein v. Romero* (1990) 219 Cal.App.3d 447, 451.) “[T]he two elements of being a [bona fide purchaser] are that the buyer (1) purchase the property in good faith for *value*,

² “The purchaser at the trustee’s sale and the grantee in the trustee’s deed acquires title free of all rights of the trustor or anyone claiming under or through him, and his title is free of all claims subordinate to the encumbrance pursuant to which this sale was made.” (*Hohn v. Riverside County Flood Control and Water Conservation Dist.* (1964) 228 Cal.App.2d 605, 613.)

and (2) have no knowledge or notice of the asserted rights of another.” (*Melendrez v. D & I Investment, Inc.* (2005) 127 Cal.App.4th 1238, 1251.) Generally, a person has notice of a fact when that person has knowledge of circumstances that would lead to that fact upon reasonable inquiry. (*Ibid.*) “For over a century, the law in California has been that a bona fide purchaser of real property has constructive notice of only those matters that could be located by a diligent title search.” (*Dyer v. Martinez* (2007) 147 Cal.App.4th 1240, 1243.)

Whether a buyer is a bona fide purchaser is a question of fact. (*Melendrez v. D & I Investment, Inc.*, *supra*, 127 Cal.App.4th at p. 1251.) That factual determination is made “based upon the circumstances that existed at the time of the buyer’s acquisition; information learned after the acquisition does not affect the buyer’s [bona fide purchaser] status.” (*Id.* at p. 1254.) Likewise, “questions of ‘intent’ and ‘purpose’ are ordinarily questions of fact” (*Redke v. Silvertrust* (1971) 6 Cal.3d 94, 103.) In ruling on a demurrer, a trial court may not “make any factual findings at all, including ‘implicit’ ones.” (*Mink v. Maccabee* (2004) 121 Cal.App.4th 835, 839.)

The allegations in the City’s first amended complaint with respect to the City’s status as a bona fide purchaser—i.e., that it purchased the \$550,000 DOT without actual or constructive knowledge that the \$1,625,000 DOT had or was intended to have senior priority to the \$550,000 DOT—were sufficient. (*Melendrez v. D & I Investment, Inc.*, *supra*, 127 Cal.App.4th at p. 1251.) U.S. Bank argued in its demurrer that the City had actual notice that the \$1,625,000 DOT was intended to have senior priority to the \$550,000 DOT when U.S. Bank so informed the City the day after the trustee sale and later provided the City with the July 1, 2005, title insurance instructions. However, “information learned after the acquisition does not affect the buyer’s [bona fide purchaser] status.” (*Id.* at p. 1254.)

U.S. Bank also argued that the deeds of trust, attached as exhibits to the first amended complaint, imparted sufficient information about the parties’ intent concerning priority such that the City can be charged with constructive knowledge of U.S. Bank’s claim that the \$1,625,000 DOT had senior priority. The parties’ intent as to lien priority

was, however, a question of fact (*Redke v. Silvertrust, supra*, 6 Cal.3d at p. 103) that was not for the trial court to resolve (*Mink v. Maccabee, supra*, 121 Cal.App.4th at p. 839).

U.S. Bank further argued, and the trial court agreed, that a reasonable purchaser would have been put on inquiry notice that the Property might be subject to a lien that was senior to the \$550,000 DOT because the \$550,000 DOT contained language that it might be a secondary lien on the property and the \$1,625,000 DOT did not, the \$550,000 DOT was one-third the amount of the \$1,625,000 DOT, the \$550,000 DOT indicated that it was a revolving line of credit and the \$1,625,000 DOT did not, and the deeds of trust were created and notarized on the same date and recorded sequentially. These are facts that might support U.S. Bank's position, but the City alleges it purchased in good faith the lowest numbered deed of trust on the Property at the trustee's sale and that it did not, prior to its purchase, have actual or constructive knowledge of U.S. Bank's position on deed priority. As noted, whether the City was a bona fide purchaser was a question of fact. (*Melendrez v. D & I Investment, Inc., supra*, 127 Cal.App.4th at p. 1251.) A trial court may not make factual findings in ruling on a demurrer (*Mink v. Maccabee, supra*, 121 Cal.App.4th at p. 839), and the trial court erred in making the factual finding that the City did not and could not qualify as a bona fide purchaser. Accordingly, we reverse the trial court's ruling on U.S. Bank's demurrer to the quiet title cause of action.

2. *Declaratory Relief*

U.S. Bank contended in its demurrer to the first amended complaint that the trial court was permitted to deny declaratory relief where another form of adequate relief was available. Thus, U.S. Bank contended, because the City's cause of action to quiet title in the Property sought a determination that it acquired the Property free and clear of the \$1,625,000 DOT, the City's declaratory relief cause of action seeking the same determination was duplicative and unnecessary.

Code of Civil Procedure section 1060 provides for a declaration of a person's rights or duties with respect to another. Code of Civil Procedure section 1061 permits a trial court to refuse to grant, in its discretion, declaratory relief "where its declaration or

determination is not necessary or proper at the time under all the circumstances.” (*C.J.L. Construction, Inc. v. Universal Plumbing* (1993) 18 Cal.App.4th 376, 389-390.)

The trial court sustained U.S. Bank’s demurrer to the City’s declaratory relief cause of action on the ground that the City did not and could not qualify as a bona fide purchaser, and not on the ground addressed here—that declaratory relief was duplicative and unnecessary. As we held above in connection with the City’s quiet title cause of action, the trial court erred in ruling that the City did not and could not qualify as a bona fide purchaser. Thus, the trial court erred in sustaining U.S. Bank’s demurrer to the City’s declaratory relief cause of action on that ground.

Generally, we must affirm the judgment if any of the grounds for the demurrer is well taken, even if that ground was not relied on by the trial court. (*Aubry v. Tri-City Hospital Dist.*, *supra*, 2 Cal.4th at p. 967; *Air Quality Products, Inc. v. State of California* (1979) 96 Cal.App.3d 340, 348.) Thus, if U.S. Bank stated alternative grounds upon which the trial court could have sustained its demurrer, we would affirm the judgment. Here, however, the trial court’s power to deny declaratory relief under Code of Civil Procedure section 1061 was discretionary if a declaration was not necessary or proper. The trial court did not exercise its discretion. We will not assume on appeal that had the trial court exercised its discretion, it would have denied the City declaratory relief for the reasons advanced by U.S. Bank. Accordingly, we reverse the trial court’s ruling on the City’s declaratory relief cause of action on the ground that the City did not and could not qualify as a bona fide purchaser, and remand for the trial court to exercise its discretion on the argument that it should deny declaratory relief because such relief would be duplicative of the relief sought in the City’s quiet title and therefore unnecessary.

DISPOSITION

The judgment is reversed. The City is awarded its costs on appeal.
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MOSK, Acting P. J.

We concur:

KRIEGLER, J.

FERNS, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.